IN THE HIGH COURT OF BOMBAY AT GOA

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CIVIL REVISION APPLICATION NO. 4 OF 2003
AND
CIVIL REVISION APPLICATION NO. 11 OF 2003

Mr. Fenelon Rebello,
Opp. Presentation Convent,
Margao-Goa. ... Petitioner.

Versus

1. Deputy Collector (Div.),
South Goa at Margao,
Salete, Goa, and

2. The Executive Engineer,
W.D. VI P.W.D., Fatorda,
Margao, Salcete, Goa, ... Respondents.

Shri J. Godinho, advocate for the petitioner.

Shri H. D. Naik, Addl. Govt. Advocate for the respondents in C.R.A. No.4/2003 & Shri P.A. Kamat, Addl. Govt.Advocate for the respondents in C.R.A. No.11/2003

CORAM : F. I. REBELLO, J.

DATE : 25th July, 2003.

ORAL JUDGMENT

Both the revision applications are being disposed of together, as the subject-matter is the same and the revisions will give rise to the same ultimate relief which the petitioner is seeking.

2. The petitioner's land was acquired. Being dissatisfied the petitioner approached this Court in First Appeal No.3/1997. A learned Division Bench of this Court by the Order dated 16th October, 1998, partly allowed the Appeal by enhancing the market value to Rs.110/- per sq.mt. The learned Division Bench also observed as under:-

"Needless to say that the appellant would be entitled for other benefits available under the said Act."

Pursuant to that the petitioners applied for execution being Execution Application No. 4 of 2002. In the Execution Application No.6 of 1999, the petitioner claimed interest on solatium. The Executing Court observed that the petitioner in the amount claimed had also claimed interest on solatium awarded and placing reliance on the judgment in **Prem Nath Kapoor vs. National Fertilizer Corpn. of India Ltd., (1996) 2 SCC 71**, held that interest on solatium was not payable. The application by the petitioner herein that the matter be differed as the issue on interest on solatium was before the Constitution Bench of the Supreme Court was rejected. The petitioner apparently challenged that order by way of a revision before this Court, but that revision was withdrawn under legal advice as, according to the learned counsel the Constitution Bench of the Apex Court had rendered Judgment on the issue in the case of **Sunder vs. Union of India, (2001) 7 SCC 211.** The petitioner has once again challenged the said order. The delay for taking out the civil revision application was condoned.

3. Civil Revision Application No.4 of 2003 is to challenge the Order of 19th July, 2002 in the Execution Application No. 4 of 2002, wherein the petitioner herein had applied subsequent to the judgment in the case of

Sunder vs. Union of India (supra), claiming interest on solatium. That was rejected by the impugned Order dated 19th July, 2003 for reasons as set out in the order.

4. On behalf of the petitioner it is contended that on the facts of this case, the petitioner would be entitled to interest on solatium and, consequently, both the impugned orders will have to set aside.

On the other hand, on behalf of the respondents, their learned counsel contends that the earlier revision preferred against the Order dated 19th April, 2001 having been withdrawn without liberty, it is not open to the petitioner herein to have filed the second revision application against the order of the Court dated 19th April, 2001, for keeping the execution application in abeyance. That being the position, it is contended that once the Civil Revision Application No. 11 of 2003 is dismissed, the Order in Civil Revision Application no.4 of 2003 cannot be interfered with and, consequently, will have to be dismissed.

5. The real issue in controversy in the instant case would be as to what was the position of law in the matter of interest on solatium before the judgment of the Apex Court in **Sunder vs. Union of India** (supra). In

Union of India vs. Ram Mehar, (1973) 1 SCC 109, a Bench of three Judges of the Apex Court had taken the view that interest was payable on solatium. That view had been reiterated in **Periyar and Pareekanni Rubbers Ltd. vs. State of Kerala,(1991) 4 SCC 195.** Thereafter the Apex Court on the same issue held that interest was not payable on solatium in **Prem Nath Kapur & Anr. vs. National Fertilizer Corpn. Of India Ltd. & Ors., (1996)2 SCC 71** and **Yadavrao P. Pathade (dead) by LRs. & Ors. vs. State of Maharashtra, (1996) 2 SCC 570.** There were therefore, two judgments of equal Co-ordinate Benches when the matter was referred to the Constitution Bench of the Apex Court, which ultimately pronounced its judgment in **Sunder vs. Union of India** (supra).

The position in law is, that when there are two judgments of Co-ordinate Benches of the Apex Court, it is not necessarily the subsequent judgment which will prevail. It is open to the High Court to accept that view which the High Court thinks would be the better view, if the two judgments of the Co-ordinate Benches of the Apex Court cannot be reconciled. (See **Ishwardas Patel vs. Union of India,1994 Mh.L.J. 1669).** The next aspect of the matter is that the Constitution Bench has now declared the law as was stated in **Union of India vs. Ram Meher** (supra). The position, therefore, would be that the law as declared by the Apex Court is the law interpreting the Act on its

enactment. In an earlier judgment today,in Civil Revision Application no. 1 of 1003, on behalf of the respondent State, a contention was advanced that the judgment in **Sunder vs. Union of India** (supra) has to be read prospectively. That contention was rejected as the Apex Court in Sunder's case has not stated that the judgment will apply prospectively. That also could not have been the decision, considering the conflicting judgments of two equal coordinate Benches of the Apex Court itself. Even otherwise, the law only can be said to be prospective if the Apex Court itself so declares. In **Sunder vs. Union of India** it has not so stated. In other words, the law would be that interest would be payable on solatium from the date the Act was enacted.

6. In the instant case, a Division Bench of this Court while enhancing the market value granted consequential benefits without setting out what the consequential benefits are. In other words the petitioner, therefore, would be entitled also to interest on solatium, that being the law. The petitioner herein had applied to the Reference Court not to execute a decree in view of the pendency of the proceedings before the Constitution Bench. The Executing Court proceeding on the footing that interest was not payable on solatium. Once a decree is not satisfied, it would have been open to the petitioner to apply for executing the decree which has not been satisfied

as long as the party had not accepted money in full and final satisfaction of the decree, or the execution itself had become barred by limitation. In the instant case, the petitioner's case would not fall under both, as the amount had not been accepted in full and final settlement of the decree, not is it barred by limitation. In the light of that both the orders of the courts below will have to be set aside and Execution Application no.4 of 2002 , which in fact though numbered separately is nothing but a revival of the earlier Execution Application, no.6 of 1999 has to be allowed. The question of setting aside Order of 19th April, 2001, does not arise as it decides nothing. However, to make an effective Order, the following Order:-

The Order dated 19th July, 2002 is set aside. The matter is remanded to the Executing Court to consider the prayer sought for by the petitioner for interest on solatium and after hearing the respondents, to dispose of the same, in the light of what is stated in this order.

Both the Revision Applications stand disposed of accordingly.

F. I. REBELLO, J.

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